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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. [redacted] 20

J. O. STOLL,

Petitioner,

vs.

WILLIAM GOTTLIEB.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS AND BRIEF IN SUPPORT THEREOF.

ALBERT W. FROEHDE,
Counsel for Petitioner.

RUSSELL F. LOCKE,
Of Counsel.

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No. 920

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS, AND BRIEF IN SUPPORT THEREOF.

Petition.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The petitioner, J. O. Stoll, by his attorney, respectfully prays that a writ of certiorari issue to review the final judgment of the Supreme Court of the State of Illinois (R. 68), being the highest court of said State, the opinion and decision of said court having been filed and entered of record on December 15, 1937 (R. 63), in the cause entitled *William Gottlieb, Appellant*, v. *S. A. Crowe, Jr., et al., (J. O. Stoll, Appellee)* (368 Ill. 88), Justice Wilson dissenting. A petition for rehearing was filed, and, after being entertained and considered by said court, was denied on

February 10, 1938 (R. 81), the opinion being then slightly modified and Justice Jones joining in the dissent. By this decision the said court reversed the judgment of the Appellate Court of Illinois, First District, rendered April 5, 1937 (R. 40), (289 Ill. App. 595), which latter judgment reversed a judgment of the Municipal Court of Chicago (R. 17). The judgment of the Municipal Court sustained a collateral attack on a decree of the United States District Court for the Northern District of Illinois, Eastern Division (R. 26), entered under Section 77-B of the Bankruptcy Act, and a collateral attack on two separate judgments (R. 36 and 38) of the said United States District Court on jurisdictional questions of Federal law.

Statement of Matter Involved.

Facts and Issues:

Respondent brought suit in the Municipal Court of Chicago against the petitioner upon mortgage bonds issued by a corporation and the guaranty thereof by the petitioner (R. 1).

Before this suit was brought, the bonds and guaranty had been cancelled and the respondent's rights had been determined by a plan of reorganization (R. 23) confirmed by a decree of the United States District Court for the Northern District of Illinois, Eastern Division (R. 26), in proceedings for reorganization of a corporation under Section 77-B of the Bankruptcy Act as amended.

Petitioner specially set up and claimed as a complete defense to this suit in the Municipal Court the proceedings in the Federal court which showed:

> that the guaranty had been cancelled and the respondents rights determined by the plan of reorganization (R. 8) and decree of the district court confirming the

plan (R. 9) in said proceedings in the district court (R. 7);

that the plan provided certain stock and cash for the holders of said bonds and guaranty sued upon by the respondent (R. 8);

that the respondent had been made a party to the proceedings in the district court by proper notice (R. 9); and,

furthermore, that the question of the power of the United States District Court to cancel the guaranty had been specifically determined by that court upon objection of other bondholders (R. 10).

After the petitioner had filed his defense in the Municipal Court of Chicago, the respondent filed in the United States District Court his petition to vacate the decree confirming the plan of reorganization directly challenging in the United States District Court the power of the district court to cancel a guaranty and determine his rights (R. 31), and the district court again decided in favor of its said power under Section 77-B of the Bankruptcy Act (R. 38), and refused to modify or vacate its decree confirming the plan of reorganization.

No appeal was taken from this decision (R. 38).

Petitioner then specially set up in the proceedings in the Municipal Court the further proceedings in the Federal court, and claimed as a further defense that the question of the power of the United States District Court was *res judicata* (R. 16).

The Municipal Court found the issues for the respondent, and entered judgment against the petitioner (R. 17).

Petitioner appealed to the Appellate Court of Illinois, First District, which court held that the question of power

of the Federal court was *res judicata*, and reversed the judgment of the trial court. One judge dissented (R. 44).

Respondent appealed to the Supreme Court of Illinois.

Rulings of the Supreme Court of Illinois:

The Supreme Court of Illinois held:

1. That a Federal court is without jurisdiction to cancel a guaranty while sitting in bankruptcy under Section 77-B for the reorganization of a debtor corporation (R. 66);

2. That the district court in this case was wholly without jurisdiction of the subject matter of this guaranty, and that that part of its decree which cancelled the guaranty was therefore void and subject to collateral attack (R. 66); and

3. That under the circumstances existing in this case, a judgment on a jurisdictional question of fact settles the question, but a judgment on a jurisdictional question of law is not binding on any other court (R. 67).

Two judges dissented.

The Supreme Court of Illinois refused to give full faith, credit and effect to the judgments of the United States District Court on the question of the power of the District Court; refused to give effect to the decree and plan of reorganization of the United States District Court; reversed the judgment of the Appellate Court of Illinois, and affirmed the judgment of the Municipal Court; thereby depriving the petitioner of a right or immunity specially set up and claimed under the Constitution and a statute of the United States.

Questions Presented:

The questions presented are:

A.

1. Are the judgments of a United States District Court, determining a jurisdictional question of Federal law, entitled to full faith, credit and effect in a State court; and

2. If so, is the jurisdictional question *res judicata* in a collateral action in a State court?

B.

1. Is a decree confirming a plan of reorganization of a corporation in proceedings under Section 77-B of the Bankruptcy Act, which, amongst other things, cancels a guaranty, absolutely void, in whole or in part, and subject to collateral attack?

There is no question of compliance with statutory jurisdictional requirements, jurisdiction of the persons, or jurisdiction of the proceedings under Section 77-B of the Bankruptcy Act. It is contended by the respondent that the United States District Court exceeded its power under the law.

Articles of the Constitution and Statutes Involved:

The Articles of the Constitution and the Statutes involved are listed below, and extracts thereof are set out in the Appendix:

Constitution, Article I, Sec. 8, Subsec. Fourth; (p. 24).
Article III, Sec. 2; (p. 24).
Article IV; (p. 24).
U. S. C., 1934, Title 11:
Ch. 1, Sec. 1 (8), p. 319 (p. 25).
Ch. 2, Sec. 11, p. 319 (p. 25).
Ch. 8, Sec. 206, p. 341 (Sec. 77-A, Bankruptcy Act) (p. 25).

Sec. 207 (a) p. 341 (Sec. 77-B (a) Bankruptcy Act) (p. 25).

Sec. 207 (b) p. 342 (Sec. 77-B (b) Bankruptcy Act) (p. 26).

Sec. 207 (g) p. 345 (Sec. 77-B (g) Bankruptcy Act) (p. 26).

Sec. 207 (j) p. 345 (Sec. 77-B (j) Bankruptcy Act) (p. 27).

Sec. 207 (o) p. 346 (Sec. 77-B (o) Bankruptcy Act) (p. 27).

Reasons Relied on for the Allowance of the Writ.

The Federal question raised by the refusal of the State Court to give full faith, credit and effect to the judgments and decree of the Federal court (*Phœnix Fire and Marine Insurance* v. *Temessee*, 161 U. S. 174, 185; *Chesapeake & Ohio Railway Co.* v. *McCabe*, 213 U. S. 207, 215; and *West Side Belt R. R. Co.* v. *Pittsburgh Construction Co.*, 219 U. S. 92, 99) was decided by the State court in a way probably not in accord with applicable decisions of this Court (*Supreme Lodge, Knights of Pythias* v. *Meyer*, 265 U. S. 30, 33; *Hancock National Bank* v. *Farnham*, 176 U. S. 640, 645; *Embry* v. *Palmer*, 107 U. S. 3, 9; *Dupasseur* v. *Rochereau*, 21 Wall. 130).

The State court held that the judgments of the district court on the question of the power of the district court were not binding on the State court, and the question determined by the district court was not *res judicata*. The far reaching effect of the principle involved in these proceedings was shown by this Court in *Johnson Co.* v. *Horton*, 152 U. S. 252, 257, where it was said that the peace and order of society demand adherence to the doctrine of *res judicata*. The decision of the State court on the controlling principle involved is probably not in accord with the decisions of this

Court in *Ex Parte Harding*, 219 U. S. 363, 369; *Dowell* v. *Applegate*, 152 U. S. 327, 340; and *Forsyth* v. *Hammond*, 166 U. S. 506, 515.

The State court held that a Federal court does not have power to cancel a guaranty under Section 77-B of the Bankruptcy Act. This Court has not determined the extent of the power of the Federal courts under Section 77-B of the Bankruptcy Act. This Court has held that bankruptcy proceedings are equity proceedings (*Local Loan Co.* v. *Hunt*, 292 U. S. 234, 240); that proceedings under Section 77 of the Bankruptcy Act are proceedings in equity (*Continental Illinois National Bank and Trust Co.* v. *Chicago, Rock Island & Pacific Railway Co.*, 294 U. S. 648, 676); and that a guaranty may be cancelled in equity (*Louisville N. A. & C. Railway Co.* v. *Louisville Trust Co.*, 174 U. S. 552, 567). The State court has decided this question in a way probably not in accord with applicable decisions of this Court.

The State court held that the district court was wholly without jurisdiction of the subject matter of the guaranty, and that part of its decree was therefore void and subject to collateral attack. The State court's decision is probably not in accord with the decisions of this Court in *Ex Parte Harding*, 219 U. S. 363, 369, and *Dowell* v. *Applegate*, 152 U. S. 327, 340.

The decisions of the Federal court and a divided intermediate appellate court of Illinois are one way, and the decision of the trial court and a two-thirds majority of the Supreme Court of Illinois are the other. All the unfortunate possibilities of conflict and collision which might arise from these adverse decisions offer the strongest inducement for this Court to exercise its authority to finally settle the question (*Forsyth* v. *Hammond*, 166 U. S. 506, 515; *Ex Parte Harding*, 219 U. S. 363, 369).

Section 77-B of the Bankruptcy Act is a comparatively new remedial statute, the scope of which has not been determined by this Court. A great many reorganization plans, and decrees confirming them, involving large sums of money, property of great value, and many persons throughout the United States, have been, and are being collaterally attacked in the State courts. If this decision of the Supreme Court of Illinois stands unreversed and is followed hereafter, it will lead to great confusion and disregard for the judgments and decrees of the Federal courts. It opens the door to successful collateral attack on every plan, order and decree of the Federal courts in proceedings under Section 77-B of the Bankruptcy Act, with all the unfortunate consequences that must follow.

Wherefore, it is respectfully submitted that this prayer for a writ of certiorari to review the judgment of the Supreme Court of Illinois should be granted.

ALBERT W. FROEHDE,
Attorney for Petitioner.

RUSSELL F. LOCKE,
Of Counsel.

BRIEF.

Opinions Below.

The opinion of the Supreme Court of Illinois is reported in 368 Ill. 88, and appears in full beginning at page 63 of the Record filed herein. Justices Jones and Wilson dissented.

The opinion of the Appellate Court of Illinois, First District, is reported in 289 Ill. App. 595, and appears in full beginning at page 41 of the Record filed herein. Justice Matchett dissented.

Both opinions contain a statement of the facts and questions decided by the respective courts.

Jurisdiction of This Court.

This Court has jurisdiction of this cause under Section 237 (b) Judicial Code of the United States, as amended (28 U. S. C. A., Sec. 344 (b)).

The refusal of the State court to give full faith, credit and effect to the judgments and decree of the Federal court raised a Federal question (*Phoenix Fire and Marine Insurance* v. *Tennessee,* 161 U. S. 174, 185; *Chesapeake & Ohio Railway Co.* v. *McCabe,* 213 U. S. 207, 215; and *West Side Belt R. R. Co.* v. *Pittsburgh Construction Co.,* 219 U. S. 92, 99); and deprived the petitioner of a right or immunity specially set up and claimed under the Constitution and a statute of the United States. In this situation this court has jurisdiction (*Nutt* v. *Knut,* 200 U. S. 13, 18-19; *Pittsburgh &c Railway* v. *Loan & Trust Co.,* 172 U. S. 493, 507-510).

The State court construed the Bankruptcy Act and declared that the Federal court did not have power under

that act to put into effect the plan of reorganization involved, and therefore, that its decree was void and subject to collateral attack, thereby depriving the petitioner of a right or immunity specially set up and claimed under the Constitution and a statute of the United States. The determination of this Federal question by the State court brings this case within the jurisdiction of this Court (*California* v. *Deseret Water &c. Co.*, 243 U. S. 415, 417).

The petitioner, at the inception of this suit, filed a defense in the trial court in which he specially set up the proceedings in the United States District Court for the Northern District of Illinois, Eastern Division, for the reorganization of a corporation under Section 77-B of the Bankruptcy Act (R. 7), including the plan of reorganization (R. 8), the decree confirming the plan of reorganization (R. 9), and the determination by the Federal court on two occasions (R. 10 and 16) of the question of the power of the Federal court, and claimed that the respondent was entitled only to that which was provided for him in the proceedings in the Federal court (R. 10).

The plan of reorganization and decree confirming it provided that the respondent should be entitled to certain stock and cash (R. 23), that the guaranty of the petitioner should be cancelled and surrendered in consideration for the transfer of all the assets of the debtor corporation to a new corporation and the surrender of the capital stock of the debtor (R. 23), and, further, that all claims and rights of the respondent be discharged and cancelled and the only rights of the respondent should be those accruing to him through the securities to be issued by the new corporation (R. 23).

The question of the power of the United States District Court to cancel the guaranty was specifically determined by the United States District Court upon objection of other bondholders by pleading, proof, hearing and judgment (R. 36). The same question was again determined by that

court upon the petition of the respondent, answer, hearing and judgment (R. 38).

The trial court refused to give full faith, credit and effect to the plan of reorganization, the decree confirming the plan, and the judgments of the district court on the question of the power of the district court; found the issues for the respondent (R. 17), overruled the petitioner's motion for a new trial (R. 17), to which exception was duly taken (R. 17), and entered judgment against the petitioner for the principal amount of the bonds and interest thereon (R. 17).

The petitioner appealed to the Appellate Court of Illinois, First District, which court held that the question of jurisdiction of the Federal court was *res judicata*, and therefore reversed the judgment of the trial court (R. 44).

The respondent appealed to the Supreme Court of Illinois, being the highest court of that State, upon leave granted; and contended that the decree confirming the plan of reorganization and cancelling the guaranty was void in that respect and subject to collateral attack (R. 53). The petitioner contended that the question of the power of the United States District Court was settled by the judgment of the United States District Court on that question, and, furthermore, that the United States District Court did have power to determine the rights of the respondent in the first instance (R. 57).

Practice in Illinois does not permit or require a formal assignment of errors.

The Supreme Court of Illinois held that the judgments of the Federal court on the question of the power of the Federal court were not binding on it (R. 67); proceeded to construe the Bankruptcy Act according to its conception of the law (R. 66); and held that the decree and plan of reorganization determining the rights of the respondent were void and subject to collateral attack (R. 68). The

Supreme Court refused to give effect to the plan of reorganization and decree confirming it, affirmed the judgment of the Municipal Court for the principal amount of the bonds and interest thereon (R. 17), and reversed the judgment of the Appellate Court, thereby depriving the petitioner of a right or immunity especially set up and claimed under the Constitution and a statute of the United States.

A petition for rehearing was filed, specifically requesting that full faith, credit and effect should be given to the judgments and decree of the Federal court (R. 70, 79), which, after being entertained and considered by said court, was denied on February 10, 1938.

Statement of the Case.

The facts in this case are set out in the opinions of the Supreme Court of Illinois (368 Ill. 88; R. 63), and the Appellate Court of Illinois, First District (289 Ill. App. 595; R. 41), and also in the Petition (pages 2-4).

This attack in the State court is a collateral second attack on the decree of the Federal court which determined the rights of the respondent, after an unsuccessful direct attack by the respondent, on the ground that the Federal court did not have power under the law to determine the rights of the respondent.

Specification of Assigned Errors.

The State court erred in its refusal and failure to give full faith, credit and effect to the plan of reorganization, decree and judgments of the Federal court which determined the rights of respondent, thereby depriving the petitioner of a right or immunity specially set up and claimed under the Constitution and a statute of the United States.

The State court erred in holding that the judgment of the United States District Court entered on the petition

of the respondent, deciding that it had power to enter the decree confirming the plan of reorganization, was not *res judicata* of this question of law.

The State court erred in holding that the district court was wholly without jurisdiction of the subject matter of said guaranty while sitting in bankruptcy under Section 77-B for the reorganization of a corporation, and that part of its decree was therefore void and subject to collateral attack.

Summary of Argument.

I. The judgments and decree of the United States District Court are entitled to full faith, credit and effect in the State court.

II. The question of the power of the Federal court under Section 77-B of the Bankruptcy Act is *res judicata*.

III. The decree of the Federal court under Section 77-B of the Bankruptcy Act, confirming the plan of reorganization, is not void in whole or in part and is not subject to collateral attack.

ARGUMENT.

I.

The judgments and decree of the United States District Court are entitled to full faith, credit and effect in the State court.

Section 77-B (j), Bankruptcy Act (U. S. C. 1934, Title 11, Ch. 8, Sec. 207 (j), page 345) provides that a certified copy of the decree confirming a plan of reorganization or of any other decree or order shall be evidence of the jurisdiction of the court, and the fact that the decree or order was made. Certified copies of the decree confirming the plan of reorganization (R. 26) and of the pleadings and

judgment on the question of power of the Federal court were received in evidence in the State court (R. 31).

The Federal court expressly found that the debtor had complied with all the provisions of Section 77-B of the Bankruptcy Act (R. 28), and construed the Bankruptcy Act as authorizing the plan of reorganization in question, which determined the rights of the respondent. On two occasions it expressly passed on the question of its power under Section 77-B of the Bankruptcy Act, namely, when creditors of the same class raised the question (R. 36), and afterward when the respondent again raised the question (R. 38). This question was squarely put in issue and decided.

But the State court held that the judgments of the Federal court on the question of the power of the Federal court were not binding upon the State court and proceeded to construe the law according to its own conception.

The State court also refused to give effect to the plan of reorganization and decree confirming it. The plan provided for the organization of a new corporation, and that for each $100 of bonds issued by the debtor corporation there be issued to the owners thereof one share of common stock in the new corporation, together with the payment of certain overdue interest to the bondholders, and that the personal guaranty of the petitioner be cancelled and surrendered in consideration of the transfer of all the assets of said debtor to a new corporation and the surrender of the common stock of the debtor (R. 23); and provided further that all claims and rights of stockholders and creditors of the debtor upon the confirmation of the plan be discharged and cancelled, cease and terminate, and the only rights of said stockholders and creditors shall be those accruing to them in and through the securities to be issued by the new corporation (R. 23). The plan and decree further provided, in the language of Section 77-B (g), Bank-

ruptcy Act (U. S. C. 1934, Title 11, Ch. 8, Sec. 207 (g), page 345) that "the provisions of the plan and the order of confirmation shall be and are binding upon • • • (3) all creditors, secured or unsecured, whether or not affected by the plan and whether or not their claims shall have been filed, and if filed, whether or not approved, including creditors who have not, as well as those who have, accepted" (R. 30). The State court utterly disregarded the provisions of the plan and decree confirming it, and the provisions of the statute, and entered judgment for the respondent against the petitioner for the principal amount of the bonds and interest thereon. The respondent was entitled only to that which was provided for him in the Federal court proceedings.

The proposition that the judgments and decrees of the United States District Courts are entitled to the same full faith, credit and effect in the State courts as the judgments of a sister State under Article IV of the Constitution of the United States, has been conclusively determined by this Court in the following cases:

Supreme Lodge, Knights of Pythias, v. *Meyer*, 265 U. S. 30, 33;

Hancock National Bank v. *Farnham*, 176 U. S. 640, 645;

Embry v. *Palmer*, 107 U. S. 3, 9;

Dupasseur v. *Rochereau*, 21 Wall. 130.

The State court failed and refused to give that full faith, credit and effect to the judgments and decree of the Federal court to which they are entitled.

II.

The question of the power of the Federal court under Section 77-B of the Bankruptcy Act is res judicata.

In this case, the Federal court on two occasions had passed on the question of its power, and had decided against the respondent. The Supreme Court of Illinois, in *Van*

Matre v. *Sankey*, 148 Ill. 536, 552, held that where a statute of a State has been given construction by the highest tribunal of the State, such construction will, ordinarily, in the courts of a sister State, be adopted as binding and conclusive, even though the examining court finds that upon similar language in a statute within their own sovereignty, they would place a different and even reverse construction.

The judgments of a Federal court must be given the same recognition in a State court as the judgments of a sister State. The Supreme Court of Illinois in the case now before this Court refused and failed to recognize the judgments of the Federal court on this question of the power of the Federal court under Section 77-B of the Bankruptcy Act.

The Supreme Court of Illinois went far out of its way to nullify the proceedings in the Federal court. In *Chamblin* v. *Chamblin*, 362 Ill. 588, 592, by unanimous opinion, it stated:

> "A court's jurisdiction having been once attacked, the former adjudication precludes the raising of the question again."

It is true that there was a jurisdictional question of fact involved in that case, instead of a jurisdictional question of law; but the same principle applies in either case. The reason given for a different ruling by the Supreme Court of Illinois in the present case, which involves a jurisdictional question of law, is that otherwise there would be no way by statute or constitution to limit the jurisdiction of the courts. Apparently, the court lost sight of the fact that adequate means are provided by statute for direct appeal from such a decision to a higher court where the matter may be finally determined. If an appeal is not taken, the decision of the jurisdictional question is binding on the parties.

This very question was settled by this Court in *Dowell* v. *Applegate*, 152 U. S. 327, 340 (Appendix, p. 21), referred to by this Court in *Ex Parte Harding*, 219 U. S. 363, 369 (Appendix, p. 21), as a leading authority. Also in the case of *Forsyth* v. *Hammond*, 166 U. S. 506, beginning at page 515 (Appendix, p. 22), this Court discusses the principle at some length. *Forsyth* v. *Hammond* involves the effect to be given a State court judgment on a jurisdictional question of law in a Federal court, but, nevertheless, the application of the principle is the same.

Inasmuch as the respondent selected the United States District Court as the forum for the trial of the same issue which he presented in this case, he is concluded by the final adjudication in the district court.

III.

The decree of the Federal court under Section 77-B of the Bankruptcy Act is not void in whole or in part and is not subject to collateral attack.

The doctrine that a court which has general jurisdiction over the subject matter and the parties to a cause is competent to decide questions arising as to its jurisdiction, and therefore that such decisions are not open to collateral attack, has been so often expounded by this Court that it may be taken as elementary and requiring no further reference to authority. (*Ex Parte Harding*, 219 U. S. 363, 369; *Dowell* v. *Applegate*, 152 U. S. 327, 337 to 340.)

Although the presumption in every stage of a cause in a District Court of the United States is that the court is without jurisdiction unless the contrary affirmatively appears from the record, yet, if such jurisdiction does not so appear, the judgment or final decree cannot, for that reason, be collaterally attacked, or treated as a nullity. (*Dowell* v. *Applegate*, 152 U. S. 327, 340.)

Whether the Federal court had power to determine the rights of the respondent in the proceedings under Section 77-B of the Bankruptcy Act was beyond the scope of the inquiry of the State court. When a judgment or decree of another court is presented as a complete defense to an action, the examining court may inquire into the jurisdiction of the court in which the original proceedings were had, and may examine the judgment or decree to determine its effect; but when the question of jurisdiction has previously been directly put in issue and decided, the examining court is bound by that decision. (*Ex Parte Harding*, 219 U. S. 363, 369; *Dowell* v. *Applegate*, 152 U. S. 327, 340; *Forsyth* v. *Hammond*, 166 U. S. 506, beginning at page 515.)

The cases cited in the opinion of the Supreme Court of Illinois involve only a *first* inquiry and determination of whether statutory jurisdictional requirements had been met, not a *second* collateral attack.

The rule in Illinois is that if the court under any circumstances had authority to enter such orders and judgments as it did enter, then its jurisdiction over the subject matter and the particular questions and circumstances involved and determined cannot be inquired into or attacked in a collateral proceeding. (*O'Connor* v. *Board of Trustees*, 247 Ill. 54, 57; *Balzer* v. *Pyles*, 350 Ill. 344, 349.)

The power of the Federal court in this case rests upon—

Article I, Section 8, Subsec. Fourth of the Constitution, which gives Congress power to establish laws on the subject of bankruptcy throughout the United States;

Article III, Section 2, of the Constitution, which provides that the judicial power shall extend to all cases in law or in equity arising under the Constitution and laws of the United States;

U. S. C. 1934, Title 11, Ch. 1, Sec. 1 (8), p. 319 (Bankruptcy Act Sec. 1 (8), which makes District Courts of the United States courts of bankruptcy;

U. S. C. 1934, Title 11, Ch. 2, Sec. 11, p. 319 (Bankruptcy Act Sec. 2), which vests the courts of bankruptcy with such power as may be necessary for the enforcement of the Bankruptcy Act;

U. S. C. 1934, Title 11, Ch. 8, Sec. 206, p. 341 (Sec. 77-A, Bankruptcy Act, which provides that the courts of bankruptcy shall have original jurisdiction in proceedings under Section 77-B of the Bankruptcy Act;

U. S. C. 1934, Title 11, Ch. 8, Sec. 207 (a), p. 341 (Sec. 77-B (a), Bankruptcy Act, which provides that the court shall have and may exercise all powers which a Federal court would have had it appointed a receiver in equity;

U. S. C. 1934, Title 11, Ch. 8, Sec. 207 (b), p. 341 (Sec. 77-B (b), Bankruptcy Act, which shows what provisions may be included in a plan of reorganization; and

U. S. C. 1934, Title 11, Ch. 8, Sec. 207 (o), p. 345 (Sec. 77-B (o), Bankruptcy Act, which provides that the jurisdiction and powers of the court shall be the same as in voluntary bankruptcy proceedings.

This Court has held that bankruptcy proceedings are equity proceedings (*Local Loan Co.* v. *Hunt*, 292 U. S. 234, 240); that proceedings under Section 77 of the Bankruptcy Act are proceedings in equity (*Continental Illinois National Bank and Trust Co.* v. *Chicago, Rock Island & Pacific Railway Co.*, 294 U. S. 648, 676); and that a guaranty may be cancelled in equity (*Louisville, N. A. & C. Railway Co.* v. *Louisville Trust Co.*, 174 U. S. 552, 567).

There is no fixed form that a plan of reorganization must take. The court of original jurisdiction must consider and

weigh all the rights and equities involved and if it finds the plan is fair, equitable and feasible, is proposed in good faith, and is in compliance with the provisions of subdivision (b) of Section 77-B of the Bankruptcy Act, it may, in the exercise of its equitable discretion, confirm the plan and make it binding upon all parties involved.

Conclusion.

The State court failed to give full faith, credit and effect to the judgments and decree of the Federal court. It decided an important question of Federal law not decided by this Court, in a way not in accord with applicable decisions of this Court. It opened the door to successful collateral attack on every plan, order and decree of the Federal courts in proceedings under Section 77-B of the Bankruptcy Act. If the proceedings of the Federal courts may be successfully attacked collaterally in the State courts, there will be no end to litigation and the result will be extreme uncertainty and confusion as to rights and privileges under the Constitution and statutes of the United States.

The petitioner respectfully submits that the judgment of the Appellate Court of Illinois, First District, should be affirmed and the judgment of the Supreme Court of Illinois should be reversed.

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Of Counsel.

APPENDIX.

Excerpts from Cases Cited.

Ex Parte Harding, 219 U. S. 363, 369:

"The doctrine that a court which has general jurisdiction over the subject matter and the parties to a cause is competent to decide questions arising as to its jurisdiction, and therefore that such decisions are not open to collateral attack, has been so often expounded (see *Dowell* v. *Applegate*, 152 U. S. 327, 337 and cases cited) and has been so recently applied (*Hine* v. *Morse*, 218 U. S. 493), that it may be taken as elementary and requiring no further reference to authority."

Dowell v. *Applegate*, 152 U. S. 327, 340:

"These cases establish the doctrine that, although the presumption in every stage of a cause in a Circuit Court of the United States is that the court is without jurisdiction unless the contrary affirmatively appears from the record, *Börs* v. *Preston*, 111 U. S. 252, 255, and the authorities there cited, yet, if such jurisdiction does not so appear, the judgment or final decree cannot, for that reason, be collaterally attacked, or treated as a nullity.

"These authorities, above cited, it is said, do not meet the present case, because the ground on which, it is claimed, the federal court assumed jurisdiction was insufficient in law to make this case one arising under the laws of the United States. But that was a question which the Circuit Court of the United States was competent to determine in the first instance. Its determination of it was the exercise of jurisdiction. Even if that court erred in entertaining jurisdiction, its determination of that matter was conclusive upon the parties before it, and could not be questioned by them or either of them collaterally, or otherwise than on writ of error or appeal to this court. As said in *Des Moines Nav. Co.* v. *Iowa Homestead Co.*, above cited, if the Circuit Court

'kept the case when it ought to have been remanded, or if it proceeded to adjudicate upon matters in dispute between two citizens of Iowa, when it ought to have confined itself to those between the citizens of Iowa and the citizens of New York, its final decree in the suit could have been reversed, on appeal, as erroneous, but the decree would not have been a nullity. To determine whether the suit was removable in whole or in part or not, was certainly within the power of the Circuit Court. The decision of that question was the exercise and the rightful exercise of jurisdiction, no matter whether in favor of or against taking the cause. Whether its decision was right, in this or any other respect, was to be finally determined by this court on appeal.' ".

Forsyth v. *Hammond*, 166 U. S. 506, 515:

"Coming now to the merits of the case it appears that on the pivotal question of the validity of the annexation proceedings the decision of the Supreme Court of the State is one way and that of the Court of Appeals directly the reverse. It is insisted by the plaintiff that the determination of the boundaries of a municipal corporation in the first instance, and any subsequent change in its boundaries by annexation of outside territory, are matters solely of legislative cognizance, and not judicial in their nature; that such is the general rule obtaining in the several States of the Union and up to the time of the decision of the Supreme Court of Indiana in this controversy, recognized in that State as elsewhere; that, therefore, the judicial proceedings in respect to this controversy in the courts of the State, culminating in the decision of its highest court, were beyond the jurisdiction of such courts, and not to be regarded as creating an adjudication binding upon other tribunals. * * *

But back of any criticism of the reasoning of the Supreme Court in its two opinions lies the fact of its decision. And here these things appear. The city of Hammond sought to bring within its limits, among other territory, the lands of plaintiff. After action by the

city council, the city instituted proceedings before the county commissioners, which proceedings were subsequently taken by appeal, as prescribed by statute, to the Circuit Court, a court of general jurisdiction, and in that court a decree was entered annexing plaintiff's lands to the City of Hammond. Were or were not these proceedings valid, and was or was not such decree a binding adjudication which neither the city nor the plaintiff could elsewhere dispute? That question certainly is one of a judicial nature. Now, it is no less a judicial function to consider whether those proceedings and that decree were valid and effective, and determine that they were and operated to annex plaintiff's territory to the city, than to enter upon a like consideration and determine that they were invalid and ineffective to make such annexation. The decision of the Supreme Court of Indiana was in favor of the validity, that of the Court of Appeals against their validity, and if it is judicial to hear and determine one way, it is likewise judicial to hear and determine the other. If action by the state tribunals stopped with the decree of the trial court, it might be said that the plaintiff did not voluntarily seek that forum. She was brought in by appropriate process, and compelled to there litigate the question. But after an adverse decree she insisted that it was not only erroneous but void, and voluntarily commenced an action in the Supreme Court of the State to have that claim established. She invoked the jurisdiction of that court. She summoned the city of Hammond into that forum and there challenged the decree of the Circuit Court, challenged it for error and also for lack of jurisdiction. The questions both of error and of jurisdiction were certainly judicial in their nature and questions within the undoubted cognizance of the Supreme Court. She voluntarily sought its judgment. Can she, after its decision, be heard in any other tribunal to collaterally deny the validity thereof? Does not the principle of *res judicata* apply in all its force? Having litigated a question in one competent tribunal and been defeated, can she litigate the same question in another tribunal,

acting independently, and having no appellate jurisdiction? The question is not whether the judgment of the Supreme Court would be conclusive as to the question involved in another action between other parties, but whether it is not binding between the same parties in that or any other forum. The principles controlling the doctrine of *res judicata* have been so often announced, and are so universally recognized, that the citation of authorities is scarcely necessary. Though the form and causes of action be different, a decision by a court of competent jurisdiction in respect to any essential fact or question in the one action is conclusive between the parties in all subsequent actions. *Cromwell v. Sac County*, 94 U. S. 351; *Lumber Co.* v. *Buchtel*, 101 U. S. 638; *Stout* v. *Lye*, 103 U. S. 66; *Nesbit* v. *Riverside Independent District*, 144 U. S. 610; *Johnson Co.* v. *Wharton*, 152 U. S. 252; *Last Chance Mining Co.*, 157 U. S. 683." (Italics ours.)

Articles of Constitution Involved.

Article I, Section 8, Subsec. Fourth of the Constitution vests Congress with the power "to establish * * * uniform laws on the subject of bankruptices throughout the United States."

Article III, Section 2, of the Constitution provides:

> "(First) The judicial power shall extend to all cases, in law or equity, arising under this Constitution, the laws of the United States, * * *"

Article IV, of the Constitution provides:

> "SECTION 1. Full faith and credit shall be given in each State to the public Acts, records and judicial proceedings of every other State. And the Congress may, by general laws prescribe the manner in which such Acts, records and proceedings shall be proved, and the effect thereof."

Statutes Involved.

U. S. C., 1934, Title 11, Ch. 1, Sec. 1 (8), p. 319 (Bankruptcy Act, Sec. 1 (8)):

"* * * 'courts of bankruptcy' shall include the district courts of the United States, * * *"

U. S. C., 1934, Title 11, Ch. 2, Sec. 11, P. 319 (Bankruptcy Act, Sec. 2):

"The courts of bankruptcy as defined in the previous chapter, namely the district courts of the United States in the several States, * * * are hereby made courts of bankruptcy, and are hereby invested, within their respective territorial limits as established on July 1, 1898, or as they may be thereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings * * *, to * * * (15) make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this title; * * *"

U. S. C., 1934, Title 11, Ch. 8, Sec. 206, p. 341 (Sec. 77-A, Bankruptcy Act):

"In addition to the jurisdiction exercised in voluntary and involuntary proceedings to adjudge persons bankrupt, Courts of Bankruptcy shall exercise original jurisdiction in proceedings for relief of debtors as provided in Section 77-B of this Act."

U. S. C., 1934, Title 11, Ch. 8, Sec. 207 (a), p. 341, (Sec. 77-B (a) Bankruptcy Act):

"Any corporation which could become a bankrupt under Section 22 of this title, * * * may file an petition, * * * stating the requisite jurisdictional facts under this section; * * *. Upon the filing of such a petition or answer the judge shall enter an

order either approving it as properly filed under this section, if satisfied that such petition or answer complies with this section and has been filed in good faith, or dismissing it. If the petition or answer is so approved, * * * the court in which such order approving the petition or answer is entered * * * shall have and may exercise all the powers, not inconsistent with this section, which a federal court would have had it appointed a receiver in equity of the property of the debtor by reason of its inability to pay its debts as they mature. * * *"

U. S. C., 1934, Title 11, Ch. 8, Sec. 207 (b), p. 342 (Sec. 77-B (b), Bankruptcy Act):

"A plan of reorganization within the meaning of this section (1) shall include provisions modifying or altering the rights of creditors generally, or of any class of them, secured or unsecured, either through the issuance of new securities of any character or otherwise; (2) may include provisions modifying or altering the rights of stockholders generally, or of any class of them, either through the issuance of new securities of any character or otherwise; * * * (9) shall provide adequate means for the execution of the plan, which may include * * * the * * * modification of liens, indentures, or other similar instruments, the curing or waiving of defaults, * * * and the issuance of securities of either the debtor or any such corporation or corporations, * * * in exchange for existing securities, or in satisfaction of claims or rights, * * *. The term "claims" includes debts, securities, other than stock, liens or other interest of whatever character."

U. S. C., 1934, Title 11, Ch. 8, Sec. 207 (g) p. 345 (Sec. 77-B (g) Bankruptcy Act):

"Upon such confirmation the provisions of the plan and of the order of confirmation shall be binding upon (1) the debtor, (2) all stockholders thereof, including

those who have not, as well as those who have, accepted it, and (3) all creditors, secured or unsecured, whether or not affected by the plan, and whether or not their claims shall have been filed, and, if filed, whether or not approved, including creditors who have not, as well as those who have, accepted it."

U. S. C., 1934, Title 11, Ch. 8, Sec. 207 (j), p. 345 (Sec. 77-B (j), Bankruptcy Act):

"A certified copy of the final decree or of an order confirming a plan of reorganization, or of any other decree or order entered in a proceeding under this section, shall be evidence of the jurisdiction of the court, the regularity of the proceedings, and the fact that the decree or order was made."

U. S. C., 1934, Title 11, Ch. 8, Sec. 207 (o), p. 345 (Sec. 77-B (o), Bankruptcy Act):

"In proceedings under this section and consistent with the provisions thereof, the jurisdiction and powers of the court, the duties of the debtor and the rights and liabilities of creditors, and of all persons with respect to the debtor and its property, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor's petition or answer was approved."